IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

APPEAL NO.611 OF 1998
IN
ARBITRATION PETITION NO.66 OF 1997

Manoj Kumar Goswami,
ofBombay, Indian Inhabitant,
residing at 45, Tagore Road,
Santacruz (W), Bombay-400 054. ...Appellant

Versus

1. P.V. Sanghavi, of Bombay,
   Indian Inhabitant, carrying on
   his business at 306, Vaishali
   Apartments, 12/14, Parekh
   Street, Bombay-400 054.
2. Indian Motion Picturs
   Distributors' Association,
   a Company registered under
   Section 25 of Indian Companies
   Act, having its registered office
   at 1st Floor, Vijay Chambers,
   Tribuvan Road, Bombay-400 004.
3. M/s.V. I. P. Films Combines,
   having its registered office
   at Ground Floor, Laxmi Villa,
   Tagore Road, Santacruz,
   Bombay-400 054. ...Respondents.

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Mr. Rajiv Narula i/b. Mr. Anuj Narula for the Appellant.
Ms.Kavita Shah for Respondent No.1.

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CORAM : R.M. S. KHANDEPARKAR &
DR. D.Y. CHANDRACHUD, JJ.

April 5, 2007.

JUDGMENT (PER DR. D.Y. CHANDRACHUD, J.):

A challenge under Section 34 of the Arbitration and Conciliation Act, 1996, to an arbitral award of the Indian Motion Pictures Distributors' Association having failed, an appeal has been filed.

2. The Appellant is an actor by profession. The Appellant has a brother by the name of Rajiv Kumar Goswami who, at the material time, resided with the Appellant and carried on business from the same address in the name and style of “VIP Films Combines”, the Third Respondent to these proceedings. By a letter dated 26th March 1991, the Third Respondent informed the Indian Motion Pictures Distributors' Association, the Second Respondent, that under an agreement of the same date, the Third Respondent had assigned distribution rights to the First Respondent in respect of a film by the name of “Deshwasi” in the territory of Bombay on a commission basis, for a period of five years from the date of the first release of the picture. By the letter, the Third Respondent requested the Second Respondent to register the Motion Picture in the name of the First Respondent. The Third Respondent by the aforesaid communication also

agreed to submit any dispute or difference with the First Respondent as a distributor to arbitration by the Second Respondent. The arbitration clause was in the following terms :

> "In the event of any dispute and or difference arising between us and the distributors in respect of the distribution, exhibition and exploitation of the said picture in the said territory, we hereby irrevocably agree and undertake to refer for adjudication such disputes and or differences to the Executive Committee of the IMPDA or to any Sub-Committee or Tribunal or Board of Arbitration that may be appointed by the Executive Committee of the IMPDA."

3. An agreement was entered into on 30th March 1991 between the Third Respondent which was described as a proprietary concern and the First Respondent for the grant of distribution rights of the Motion Picture "Deshwasi". The Appellant admittedly was not a party to the agreement.

4. The Appellant performed the role of a guest artist in the film "Deshwasi" and it is his case that on account of his goodwill in the Film Industry, the Third Respondent used the name of the Appellant as a person presenting the Motion Picture. On 12th June 1996, a letter was addressed by the First Respondent to the Third Respondent seeking to forward a statement of account and

seeking to recover an unrepresented balance of Rs.2,21,402/-. A copy of the letter was endorsed to the Appellant and he was sought to be made jointly and severally responsible for the payment on the ground that he had an interest in the motion picture. By his letter dated 15th June 1996, the Appellant recorded that the film has been produced by the Third Respondent whose proprietor was Rajiv Goswami. The Appellant stated that he has no interest whatsoever directly or indirectly in the film and that the proprietor of the Third Respondent had left Mumbai over two years prior thereto and settled in the State of Haryana. The address of Shri Rajiv Goswami was furnished by the Appellant to the First Respondent.

5. The First Respondent lodged a complaint with the Second Respondent on 3rd July 1996 and made the Appellant a party to the proceedings. The allegation against the Appellant was inter alia to the following effect :

> "Mr.Manoj Kumar Goswami is a well known producer and artist, who is the real brother of the producer having his office at at the same place and residing both together. Mr. Manoj Kumar Goswami has direct interest in the picture and he has presented the picture along with the producer, and the same has been adequately publicised in all the Press, Street, and other publicity such as photoset, enlargement slides, booklets, posters etc."

6. On 5th July 1996, the Second Respondent, while communicating the complaint lodged by the First Respondent, called upon the Appellant to settle the matter with the Third Respondent within ten days. By a letter dated 22nd July 1996, the Second Respondent convened a meeting of the adjudicating Sub Committee on 9th August 1996. By his letter dated 8th August 1996, the Appellant recorded that he was unaware about the terms on which the First Respondent had acquired the film for the Bombay Circuit, nor for that matter had the Appellant furnished any guarantee about his investment. In these circumstances, the Appellant requested the Second Respondent to scrutinize the agreement and to fix another date of hearing if any material was found in the agreement so as to involve the Appellant. The Appellant also sought a copy of the agreement. On 6th September 1996, the Second Respondent fixed another date of hearing on 20th September 1996. By his letter dated 12th September 1996, the Appellant recorded that he had still not received a copy of the agreement from the Second Respondent, and once again called upon the Second Respondent to verify as to whether the agreement reflected the involvement of the Appellant.

7. The claim lodged by the First Respondent was adjudicated upon by the Second Respondent and an award was passed on 20th September 1996. A gist of the award was communicated to the Appellant by a letter dated 29th October 1996. In the arbitral award, the Second Respondent has noted the contention of the First Respondent that the Appellant was actively connected with the production of the film, that the First Respondent has invested the money for the publicity of film and for the exploitation thereof relying on the personal assurance of the Appellant for refund of the unrecouped advance. The contention of the First Respondent was that copies of posters and other publicity material mentioned that the motion picture was presented by the Appellant. Both the Appellant and Rajiv Goswami, it is alleged, resided in the same premises and functioned from the same office, the Appellant being the brother of the latter. The Arbitral Committee allowed the claim holding that the Appellant was “actually and actively connected with the production of the said picture”. The award was passed in the amount of Rs.2,21,402.87 together with interest at the rate of 21% per annum against the Appellant and the Third Respondent who are held to be jointly and

severally liable.

8. The Appellant instituted a petition under Section 34 of the Arbitration and Conciliation Act, 1996. By a judgment and order dated 9th June 1997, the Learned Single Judge dismissed the Arbitration Petition. The contention of the Appellant was that the contract was between the First Respondent and the Third Respondent and the Appellant was not a party thereto. The Learned Single Judge rejected the contention on the ground that the award showed that the Appellant was actively connected with the production of the film, that the posters and publicity material, according to the release prints and trailers, mentioned that the motion picture was being presented by the Appellant. The Learned Single Judge noted that the Third Respondent was a proprietary concern of the Appellant's brother and was functioning from the same office with a common Manager.

9. In support of the appeal, it has been urged that (i) Under Section 7 of the Arbitration and Conciliation Act, 1996, it is mandatory that the arbitration agreement has to be in writing; (ii) There is no arbitration agreement in writing between the Appellant

and the First Respondent to refer any dispute to the arbitration of the Second Respondent or to any other Arbitrator; (iii) The distribution agreement dated 30th March 1991 was between the First and Third Respondents to which the Appellant was not a party and hence, there was no occasion to implead the Appellant as a party to a dispute between the First and Third Respondents; (iv) The Second Respondent had no jurisdiction in these circumstances to entertain any dispute between the Appellant and the First Respondent; and (v) The posters and other publicity material of the film merely mentioned that the film was being presented by the Appellant. Neither this, nor for that matter, the guest appearance of the Appellant in the film could have any bearing on whether the Appellant was, in fact, a party to the contract between the First and Third Respondents or the arbitration agreement.

10. On the other hand, on behalf of the Respondents, the arbitral award was sought to be stipulated by submitting that the circumstances which weighed with the arbitral forum were valid and the Learned Single Judge was consequently justified in dismissing the Arbitration Petition.

11. Sub-section (3) of Section 7 of the Arbitration and Conciliation Act, 1996, requires that the arbitration agreement has to be in writing. By virtue of the provisions of Sub-Section (4), an arbitration agreement is in writing, if it is contained in – (a) a document signed by the parties; (b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other. Section 16(1) empowers the Arbitral Tribunal to rule on its own jurisdiction including on any objections with respect to the existence or validity of the arbitration agreement. Under sub-section (2), a plea that the Arbitral Tribunal does not have jurisdiction has to be raised not later than the submission of the statement of defence. The Arbitral Tribunal is required by sub-section (5) to decide on a plea referred to in sub-section (2) and where it takes a decision rejecting the plea to continue with the arbitral proceedings and to make an arbitral award. A party aggrieved by an arbitral award will then have recourse to an application for setting aside the award in accordance with Section 34. That is the scheme of the provisions

of the Act. In the present case, the documents which have been produced together with the Arbitration Petition ex-facie show that the agreement of distributorship dated 30th March 1991 was between the First and Third Respondent. The Third Respondent is a proprietary concern of the brother of the Appellant. By his letter dated 26th March 1991, the proprietor of the Third Respondent had sought registration of the motion picture with the Secretary of the Second Respondent. By that letter, the Third Respondent had agreed to submit any dispute or difference arising with the distributor to arbitration by Second Respondent. From the documents as they stand, it is impossible to subscribe to the submission of the First Respondent which found favour with the Arbitral Forum that the Appellant was bound by the arbitration agreement or the contract between the First and Third Respondents. The Appellant was not a party to that contract, nor was he a party to the arbitration agreement. It must be noted that it was not the case of the First Respondent who was claimant in the arbitral proceedings that the Appellant was a party to the contract or to the arbitration agreement. The case against the Appellant was that he was actively interested in the motion picture, the circumstances in support being: (i) The Appellant is the brother of

the proprietor of the Third Respondent; (ii) Both, the Appellant and the sole proprietor, the Third Respondent, resided together and had a common office; (iii) The Appellant was shown to have presented the picture along with the producer; and (iv) The publicity material showed that the Appellant had presented the motion picture. All through the proceedings before the Arbitral Forum, the Appellant had specifically raised the plea that the First Respondent had an agreement with the Third Respondent. In fact, the Appellant sought a copy of the agreement from the Second Respondent and requested the Second Respondent to highlight which part of the agreement would lead to the Appellant being responsible thereunder. The submission of the Appellant that he was not a party to the agreement at all and could not be held liable thereunder ought to have been dealt with by the Arbitral Forum. The Arbitral Forum instead, overlooked a fundamental objection to its jurisdiction and held the Appellant jointly and severally liable with the following observation:

> "The committee noted further that Shri Manoj Kumar Goswami was actually and actively connected with the production of the said picture. In the circumstances, the sub-committee held that both/Shri Rajiv Kumar Goswami and Manoj Kumar Goswami were jointly and severally responsible for payment of unrecouped advance paid by Shri P.V. Sanghvi."

The letters written by the Appellant to the Second Respondent on 8th August 1996 and 12th September 1996 have undoubtedly been written in the language of a layperson. Those letters nonetheless revealed an objection as to the jurisdiction of the Tribunal which ought to have been considered. The circumstances which have been relied upon in the arbitral award and which have found favour with the Learned Single Judge do not furnish an answer to the basic issue as to whether the Appellant was a party to the contract between the First and Third Respondents or indeed whether he was a party to the arbitration agreement. The answer to both the questions is clearly in the negative.

12. For these reasons, we are of the view that the award of the Second Respondent is patently lacking in jurisdiction and is liable to be set aside under Section 34 of the Arbitration and Conciliation Act, 1996, read with sub-section (6) of Section 15. The judgment of the Learned Single Judge will accordingly, have to be set aside.

13. The appeal is accordingly allowed. The judgment of the Learned Single Judge, dated 9th June 1997 is set aside. The

Arbitration Petition is accordingly made absolute in terms of prayer clause (a) by setting aside the award of the Second Respondent dated 20th September 1996 to the extent to which it holds the Appellant liable. In the circumstances of the case, however, there shall be no order as to costs.

(R. M. S.KHANDEPARKAR, J.)

(DR.D. Y. CHANDRACHUD, J.)